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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,868	08/03/2001	Vikas Agarwal	JP920010088US1	7137

7590 06/17/2005
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EXAMINER

PATEL, ASHOKKUMAR B

ART UNIT PAPER NUMBER

2154

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/921,868	AGARWAL ET AL.	
	Examiner	Art Unit	
	Ashok B. Patel	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) 7,10-12,14,17 and 18 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-6,8,9,13,15,16,19 and 20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 1-20 are subject to examination. Claims 7, 10-12, 14, 17 and 18 have been cancelled.

Response to Arguments

2. Applicant's arguments with respect to claims 1-9, 13, 15-16 and 19-20 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(e) *the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*

4. Claims 1-3, 5, 6, 8, 9, 13, 15, 16, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Abrams et al. (hereinafter Abrams) (US 2002/0166117 A1)

Referring to claim 1,

Abrams teaches a method of providing access for a plurality of application-level users to an application comprising a plurality of resource class components collectively executing on multiple networked machines (Abstract) , the method comprising steps of:

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receiving an incoming flow of requests from application-level users to use an application and components of said application (Abstract);

providing, for each of the application-level users, respective sets of one or more application instances of each resource class component for the application on one or more machines, to service the incoming requests from respective application-level users to use the application (Abstract, page 2, para.[0021]);

directing each of the incoming requests to a particular application instance of an appropriate resource class component (page 6, para.[0067]);

monitoring, for each of the application-level users, the number of request serviced by the application instances of the resource class components of the application (Abstract);

increasing or decreasing the number of application instances of one or more resource class components in response to the monitored number of requests for each resource class component (Abstract, page 2, para.[0021]);

maintaining a record of the current rate of requests received from respective application-level users based on the monitored number of serviced requests (page 2, para.[0021]); and

collectively and automatically allocating fractions of different resource class components to a particular application-level user in response to the increased or decreased number of application instances of one or more resource class components (page 5, para.[0062], page 6, para.[0067]).

Referring to claim 2,

Abrams teaches the method as claimed in claim 1, further comprising the step of:

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directing each of the incoming requests from respective application-level users to a particular application instance of an appropriate resource class component from a respective set of one or more application instances of each resource class component, said particular application instance being identified as the least loaded of the application instances of the appropriate resource class component from that respective set. (page 6, para.[0067])

Referring to claim 3,

Abrams teaches the method as claimed in claim 1, wherein the step of providing application instances of each resource class component further comprises the steps of: initiating one or more application instance of one or more resource class on a plurality of machines to service incoming requests to use the application (page 6, para.[0067],[0068]); and terminating one or more application instances of each resource class on a plurality of machines to service incoming requests to use the application (page 2, para.[0021]).

Referring to claim 5,

Abrams teaches the method as claimed in claim 1, further comprising the step of: maintaining a record of service obligations to respective application-level users. (page 6, para.[0064], page 14, para. [0125])

Referring to claim 6,

Abrams teaches the method as claimed in claim 5, further comprising the step of: increasing or decreasing, for each of the application-level users, the number of application instances of each resource class component in response to the monitored number of requests for each resource class component, wherein the

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service obligations to respective application-level users are at least met. (page 6, para.[0064], page 14, para. [0125], page 8, para.[0078]).

Referring to claim 8,

Abrams teaches the method as claimed in claim 7, wherein said step of increasing or decreasing the number of application instances of said one or more resource classes in (i) at least partly based upon said recorded current rate of requests received from respective application-level users, (page 8, para.[0074]) and (ii) at least partly based on predetermined information that correlates changes in request rates with charges in the corresponding number of application instances of said one or more resource classes required to service said request rates.(page 6, para.[0068], page 8, 0078])

Referring to claim 9,

Abrams teaches the method as claimed in claim 1, wherein one or more of the application-level users are organizations, and the requests are generated by individuals associated with the respective organization. (page 5, para. [0059])

Referring to claim 13,

Abrams teaches the method of providing access for a plurality of application-level users to an application comprising a plurality of resource class components collectively executing on multiple networked machines (Abstract), the method comprising steps of:

receiving an incoming flow of requests from application-level users to use an application and components of said application (Abstract);

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providing, for each of the application-level users, respective sets of one or more application instances of each resource class component for the application on one or more machines, to service the incoming requests from the application-level users to use the application (Abstract, page 2, para.[0021]);

monitoring, for each of the application-level users, the resources currently available and resources currently consumed by the requests serviced by application instances of the resource class components of the application (Abstract); and

maintaining a record of resources currently available to respective application-level users; and a record of resources currently consumed by respective application-level users; both records of said resources being maintained in respect of each of the one or more application instances of each resource class components (page 6, para.[0067]); and

adjusting the respective numbers of said one or more application instances of each component (Abstract, page 2, para.[0021]); and

collectively and automatically allocating fractions of different resource class components to a particular application-level user in response to a fluctuating number of application instances of one or more resource class components. (page 5, para.[0062], page 6, para.[0067]).

wherein said application instances of each resource class component are adjusted for each application-level user based (i) at least partly on said records of resources currently available and currently consumed by respective application-level users (page 8, para.[0074]). and (ii) at least partly on predetermined

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information that estimates the number of each resource class components required to service requests for said application instances of the resource class components (page 6, para.[0068], page 8, 0078]).

Referring to claim 15,

Claim 15 is a claim to a system that carries out the steps of method of claim 1.

Therefore claim 15 is rejected for the reasons set forth for claim 1.

Referring to claim 16,

Claim 16 is a claim to a computer software program, recorded on a medium and capable of execution of steps of method of claim 1. Therefore claim 16 is rejected for the reasons set forth for claim 1.

Referring to claim 19,

Claim 19 is a claim to a system that carries out the steps of method of claim 13.

Therefore claim 19 is rejected for the reasons set forth for claim 13.

Referring to claim 20,

Claim 20 is a claim to a computer software program, recorded on a medium and capable of execution of steps of method of claim 13. Therefore claim 20 is rejected for the reasons set forth for claim 13.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (hereinafter Abrams) (US 2002/0166117 A1) in view of Microsoft Computer Dictionary (hereinafter Microsoft) Published in 1997.

Referring to claim 4,

Keeping in mind the teachings of Abrams, although Abrams teaches at para.[0125], page 14, "Execution policies relate to user-level SLAs and priorities for execution.", Abrams fails to specifically teach , wherein requests from application-level users to use the application are stored in a queue for execution by a particular application instance of the appropriate resource class on a first-in-first-out basis.

Microsoft teaches " a method of processing a queue, in which they were removed in the same order in which they were added – the first in is the first out.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to prioritize the execution of the requests of Abrams per Microsoft such that same user level SLAs are executed in a first-in-first-out basis.

Conclusion

Examiner's note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and

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are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashok B. Patel whose telephone number is (571) 272-3972. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Abp



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